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No. 89-535

In The

Supreme Court of the United States

October Term 1989

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES,

Petitioner,

v.

ELIZABETH STROOP, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF LARRY D. JACKSON, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES AS RESPONDENT SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether Social Security child's insurance benefits, paid under 42 U.S.C. § 402(d), are "child support payments" within the meaning of an Aid to Families With Dependent Children (AFDC) provision, 42 U.S.C. § 602(a)(8)(A)(vi), which requires that the first $50 per month of child support payments be disregarded in determining AFDC eligibility and assistance levels.

PARTIES TO THE PROCEEDINGS

The petitioner is the Secretary of Health and Human Services. The respondents are plaintiffs Elizabeth Stroop, Melissa Lam by her next friend Elizabeth Stroop, Bret Lam by his next friend Elizabeth Stroop, Jamie Stroop by her next friend Elizabeth Stroop, Geneva Powers, Crystal McClanahan by her next friend Geneva Powers, Dorothy Brown, and Robert Lee Turner by his next friend Dorothy Brown, on behalf of themselves and all others similarly situated. The plaintiffs in the district court included Karen B. Carter, Ragene Carter by her next friend Karen B. Carter, Paul Jones, Cory P. Jones by his next friend Paula Jones, and David L. Jones, but they were neither appellants nor appellees in the court of appeals. The Commissioner of the Virginia Department of Social Services was a defendant in the district court and a separate appellee in the court of appeals; the Commissioner was not an appellant in the court of appeals regarding the present issue.

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BRIEF OF LARRY D. JACKSON, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES AS RESPONDENT SUPPORTING PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 870 F.2d 969. The opinions of the district court (Pet. App. 14a-22a, 23a-27a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 28, 1989. A petition for rehearing *en banc* was

denied on May 31, 1989 (Pet. App. 31a-34a). On August 25, 1989, Chief Justice Rehnquist extended the time for filing a petition for writ of *certiorari* to September 28, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Because of their length, the provisions of law in this case are set out verbatim in the Petition, Appendix G. Those provisions of law are:

> Sections 402(a)(7)(A) and (8)(A)(vi), 457(b)(1), and 202(d)(1) of the Social Security Act (42 U.S.C. §§ 602(a)(7)(A) and (8)(A)(vi) (Supp. V 1987); 42 U.S.C. § 657(b)(1) (Supp. V 1987); 42 U.S.C. § 402(d)(1) (1982 & Supp. V 1987)) (Pet. App. 35a-39a). Aid to Families with Dependent Children (AFDC) regulations 45 C.F.R. § 302.51(b)(1) and 45 C.F.R. § 232.20(a) and (d) (Pet. App. 40a-41a).

STATEMENT OF THE CASE

This case concerns the scope of the $50 per month disregard for "child support payments" that Congress required the states to apply in determining AFDC eligibility and benefit levels.

In the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, § 2640, 98 Stat. 494, 1145-46 (1984), several changes were made to the AFDC program. Section 402(a) of the Social Security Act (42 U.S.C. § 602(a)) was amended by the addition of paragraph 38, which required

that, for purposes of AFDC eligibility determinations, the income of any sibling or parent living in the same household must be included as a part of the AFDC family's income.[1]

DEFRA further amended Title IV of the Social Security Act by adding two provisions: the first, requiring the payment to the AFDC family of the first $50 of monthly support collected by the state under its Child Support Enforcement Plan under Title IV-D of the Social Security Act ("pass through"),[2] and the second, providing for the

[1] Prior to 1984, all co-resident family members were not required to be included within the AFDC unit. Thus, a family could maximize its AFDC benefits by excluding members with income.

[2] "The amounts collected as support by a state pursuant to a plan approved under this part (42 U.S.C. §§ 651 *et seq.*) . . . shall be distributed as follows:

> 1. [t]he first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance to such family during such month."

DEFRA § 2640(b), 98 Stat. 494, 1145 (1984); 42 U.S.C. § 657(b)(1) (Supp. V 1987).

In 1988, Congress amended this provision (Family Support Act of 1988, Pub. L. 100-485, Tit. I, § 102(b), 102 Stat. 2346) to provide: *"[O]f such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due* shall be paid to the family without affecting its eligibility for assistance or decreasing any

(Continued on following page)

disregard, for AFDC eligibility purposes, of the first $50 of child support payments received with respect to the dependent children in the family.[3] Under normal circumstances, child support payments assigned to the state are collected by the state (42 U.S.C. § 654). Section 2640(b) of DEFRA requires that the first $50 per month of such amount collected by the State be passed through to the family. There are circumstances, however, when assigned

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(Continued from previous page)

amount otherwise payable as assistance to such family during such month." (Emphasis added to show amended language.)

[3] "[I]n making the determination under paragraph (7), the State agency –

> . . . (vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title)."

DEFRA § 2640(c), 98 Stat. 494, 1146 (1984); 42 U.S.C. § 602(a)(8).

In 1988, Congress further amended this disregard provision (Family Support Act of 1988, Pub. L. 100-485, Tit. I, § 102(a), 102 Stat. 2346) to provide: "[I]n making the determination under paragraph (7), the State agency . . . (vi) shall disregard the first $50 of any child support payments *for such month received in that month and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due,* with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title)." (Emphasis added to show amended language.)

child support payments are paid directly to the family. In these instances states have the option of collecting these payments directly from the family (IV-D option) or allowing the family to retain the support payment, treating it as income in calculating AFDC benefits (IV-A option) (45 C.F.R. § 302.31(a)(3)(ii)). For states exercising the IV-A option, since the state did not collect the support, it has nothing to pass through to the family. The disregard provided in § 2640(c) of DEFRA extends the same treatment to these families as those whose child support payments were made directly to the state and received the $50 pass through. The question before the Court is whether that treatment extends to benefits under Title II of the Social Security Act.[4]

The Secretary published regulations implementing the family income requirement and the disregard for child support payments (49 Fed. Reg. 35599 (1984), 45 C.F.R. § 206.10(a)(1)(vii)). Those regulations required that an applicant for AFDC benefits include the income of any sibling or parent living in the same household. *Id.* The regulations applied to siblings who receive Title II Social Security benefits, as well as to those who receive other income, making these payments a part of the AFDC family income calculation. The regulations further required a $50 per month disregard from child support payments received from noncustodial parents, but did not require a

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[4] Title II of the Social Security Act (42 U.S.C. § 401 *et seq.*) makes insurance benefits available to children whose parent was an insured wage earner under the Act in the event such parent dies, becomes disabled, or retires. Such benefits are not assignable at law or in equity (42 U.S.C. § 407(a)).

$50 per month disregard for any other type of payments, including Title II child's benefits. Virginia's implementing regulations paralleled the Secretary's regulations.

On June 23, 1986, respondents[5] filed a class action against the Secretary and the Commissioner of the Virginia Department of Social Services to challenge the regulations promulgated by the Secretary and the corresponding state regulations.[6]

After this Court's decision in *Bowen v. Gilliard*, 483 U.S. 587 (1987), which upheld the constitutionality of the family income requirement, respondents voluntarily dismissed the claims of children receiving child support and the claims of the noncustodial parents paying such support. Respondents continued to argue, however, that the required inclusion of children receiving Title II benefits in the AFDC assistance unit constituted an involuntary diversion of their benefits in violation of the anti-alienation provision of the Social Security Act, 42 U.S.C. § 407(a), and the provisions of the Act governing the duties of representative payees (42 U.S.C. § 408(e)). In the alternative, respondents claimed that if the inclusion of children receiving Title II benefits were upheld, the first $50 of their monthly benefits should be excluded as "child support payments," and disregarded in calculating

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[5] Although Larry D. Jackson is technically a respondent in this appeal (Sup. Ct. R. 12.4), references in this brief to "respondents" refer only to plaintiffs.

[6] The named plaintiffs consisted of five Virginia families, each of which included children receiving AFDC and other children, not receiving AFDC, who received child support or Title II benefits.

eligibility and benefit levels (42 U.S.C. § 602(a)(8)(A)(vi)).

The district court upheld the Secretary's inclusion of Title II benefits as income under the family income requirement (Pet. App. 14a-22a).

The district court further held that the $50 disregard provision (42 U.S.C. § 602(a)(8)(A)(vi)) must be applied to Title II benefits, as well as child support payments. *Id.* The court held that the purpose of the disregard was to "mitigate" the hardship imposed by the DEFRA amendments, and concluded that since children receiving social security benefits and children receiving child support payments suffer equally under the amendment, the families should equally enjoy the relief provided by the disregard. *Id.* at 22a. The court found the Secretary's treatment to be "demonstrably irrational." *Id.* at 18a. On March 4, 1988, the district court denied the Secretary's motion to alter or amend the decision regarding the $50 disregard (Pet. App. 23a-27a).

The Secretary appealed from the district court's determination on the $50 disregard, and respondents cross-appealed on the assistance unit ruling. The court of appeals affirmed the judgment of the district court in its entirety, upholding the Secretary's inclusion of Title II benefits as income under the family income requirement and the requirement that the first $50 of such payments be disregarded in calculating family income (Pet. App. 1a-13a). The court rejected the Secretary's interpretation that the purpose of the disregard was to serve as an incentive for obtaining child support payments from noncustodial parents. *Id.* at 10a. The court, relying on this

Court's comment in *Bowen v. Gilliard*, 483 U.S. 587 (1987), that the burden of the family income requirement was "mitigated" by the pass through of the first $50 of child support collected by the state, concluded the disregard of the first $50 of social security payments serves the same purpose. *Id.*

On May 31, 1989, the court of appeals denied the Secretary's petition for rehearing and suggestion for rehearing *en banc* (Pet. App. 31a-34a).

On January 8, 1990, this Court granted the Secretary's petition for writ of certiorari to determine whether Title II child's benefits are properly considered "child support payments" for purposes of the $50 per month disregard. On that date this Court denied respondents' cross-petition on the question of whether Title II child's benefits are properly subject to the family income requirement.

SUMMARY OF ARGUMENT

In enacting the $50 per month disregard for "child support payments," Congress does not define that term. The term, however, does have a commonly understood meaning: monies paid by a parent to another toward the expenses of a child for whom the parent has a legal obligation to provide economic maintenance. Title II benefits do not fall within this commonly understood meaning. They are neither paid by a parent nor are they based upon the legal obligation of a parent to support a child.

In addition, Congress has used the term "child support" numerous times within Title IV of the Social Security Act and consistently uses it to refer to a payment by a noncustodial parent pursuant to a legal obligation. "A legislative body generally uses a particular word with a consistent meaning in a given context." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972). The legislative history surrounding the enactment of the family income requirement in § 2640(a) of DEFRA indicates that Congress recognized the distinction between social security "benefits" and "child support payments."

Both the "pass through" and disregard provisions were added to DEFRA by the conference committee. The conference report reveals nothing of Congress' intent in enacting these provisions. In such circumstances, it is particularly appropriate to afford deference to the Secretary's interpretation unless that interpretation is unreasonable.

The Secretary's interpretation is not unreasonable. In the years surrounding the enactment of the disregard, Congress has repeatedly expressed concern over the problem of the nonpayment of child support by noncustodial parents. Nor is Congress a stranger to the use of financial incentives to encourage the establishment and collection of child support payments from noncustodial parents, having enacted a similar incentive for a 15-month trial period in 1974. Further, increasing child support payments, which move families off AFDC and reimburse the federal treasury, is a goal consistent with a spending reduction measure.

Nor is it unreasonable to distinguish between child support payments from noncustodial parents and Title II benefits. The Social Security Administration does not need an incentive to pay benefits to those entitled. History has shown that noncustodial parents do need incentives, both positive and negative, to make regular child support payments. A noncustodial parent may well be encouraged to make such payments knowing that the family will receive a bonus. A custodial parent needs little incentive to fill out application forms for social security benefits, but it is significantly different to ask a custodial parent to become engaged in the judicial process against a former spouse or paramour.

The Secretary's reading of the $50 disregard should be upheld. It is consistent with the commonly understood meaning of "child support," Congress' use of that term consistent with that meaning, and with Congress' expressed concern with the problem of the lack of child support.

ARGUMENT

A.

The Secretary's Interpretation Of The $50 Disregard Is Consistent With Congressional Intent As Expressed In The Language Of The Statute

In enacting the $50 per month disregard, Congress uses the term "child support payments" but does not define it. Therefore, in order to determine whether Title II benefits are "child support payments" subject to the $50

disregard, this Court must ascertain the intent of Congress and interpret the AFDC statute accordingly. *United States v. American Trucking Assoc., Inc.*, 310 U.S. 534, 542 (1940).

The starting point for determining congressional intent is the language of the statute itself, *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490, 508 (1981), giving ordinary meaning to ordinary words. *Burns v. Alcala*, 420 U.S. 575, 580-81 (1975). The term "child support," while perhaps a development of more modern usage, does have an ordinary and commonly understood meaning: monies paid by a parent to another toward the expenses of a child for whom the parent has a legal obligation to provide economic maintenance.[7]

Monies paid on behalf of a child under Title II do not fall within the commonly understood meaning of the term "child support payments." They are not paid by a parent, but by a governmental agency; nor are they contingent upon a legal obligation of a parent to support his or her child. Indeed, children who are owed a duty of support

[7] *See Black's Law Dictionary* 217 (5th Ed. 1979) ("The legal obligation of parents to contribute to the economic maintenance, including education, of their children; enforceable in both civil and criminal contexts. In a dissolution or custody action, money paid by one parent to another toward the expenses of children of the marriage."); *Oran's Dictionary of the Law* 412 (1983) ("Support 1. The obligation to provide for your immediate family. 2. The payments made to a wife, husband, child, etc. (with or without court supervision or formal agreement) to meet the obligation in No. 1.").

may be denied Title II benefits because they cannot meet the "dependency" test (42 U.S.C. § 402(d)(1)). Step-children may qualify for benefits even though the step-parent owes no legal duty of support (42 U.S.C. § 402(d)(4)). Benefits are payable after a parent's duty of support has ceased with the parent's death (42 U.S.C. § 402(d)(1)). And, while the parent may have contributed to the Social Security trust fund from which such benefits are paid, those benefits are also financed, in part, by taxes upon the employer. Title II benefits may provide a degree of economic security to a child when a parent becomes disabled, retires, or dies, and thus make such payments a government "substitute" for child support payments, but they simply do not meet the commonly understood meaning of the term "child support payments."

While it is true that a number of state courts have allowed Title II children's benefits to be credited against a parent's court-ordered child support obligation, such treatment is not universally required as a matter of law. As those cases routinely point out, such allowance is primarily based upon equitable considerations. *See, e.g., Children and Youth Services v. Chorgo*, 341 Pa.Super. 512, 491 A.2d 1374, 1377 (1985) (" . . . the enquiry should be whether it is fair and just that the support obligor be given credit for these benefits."). Some cases emphasize any such allowance is committed to the sound discretion of the trial court. *See, e.g., Chase v. Chase*, 74 Wash.2d 253, 259, 444 P.2d 145, 149 (1968) ("With the husband's disability and consequent loss of employment, the court could, in its discretion, properly treat the social security benefits paid to the wife for the minor child's support as a

contribution by the father toward and deductible from the court-decree support payments. 42 U.S.C. § 402. But this is discretionary and not automatic."); *Hepton v. Hepton*, 25 Wash. App. 229, 231, 605 P.2d 1288, 1289 (1980) (" . . . receipt of social security does not give rise to an automatic reduction of the support payment"). Other state courts have held that Title II benefits do not relieve an obligor of a support obligation, even *pro tanto*, absent a showing of financial inability. *Joachim v. Joachim*, 57 N.Y.AD.2d 546, 547, 393 N.Y.S.2d 63, 64 (1977), *cert. denied*, 434 U.S. 1066 (1978).

There is no generally accepted principle that Title II benefits must be treated as "child support payments." Merely because such benefits are, in some circumstances, considered a substitute for child support payments does not mean that they are "child support payments" as that term is generally understood. In any event, such state cases are of little relevance to the present issue. There is simply no evidence that Congress intended the $50 disregard to be applied on a state-by-state or a case-by-case basis.

Further, there are numerous references throughout Title IV of the Social Security Act to "child support" and consistently the term is used to refer to payments from noncustodial parents pursuant to a legal obligation.[8] As

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[8] *See, e.g.*, 42 U.S.C. § 602(a)(28) ("provide that in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D, and retained by the state . . . "); 42 U.S.C. § 651 ("For

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"a reflection of practical experience in the interpretation of statutes, a legislative body generally uses a particular word with a consistent meaning in a given context." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972).

The distinction between "child support" and social security benefits is also reflected in the family income requirement. In § 2640(a) of DEFRA, establishing the family income requirement, Congress describes payments under Title II as "benefits," not support or child support.[9]

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the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining spousal and child support, assuming that assistance in obtaining support will be available under this part [42 U.S.C. § 651, *et seq.*] to all children . . . "); 42 U.S.C. § 654 ("A state plan for child and spousal support must: "(4) provide that such states will undertake – (a) . . . (b) in the case of any child with respect to whom such assignment is effective . . . to secure support for such child from his parent (or from any other person legally liable for such support. . . .")

See also 42 U.S.C. § 602(a)(27); 42 U.S.C. § 602(a)(31)(D); 42 U.S.C. § 603(b)(2)(c); 42 U.S.C. § 603(a); 42 U.S.C. § 652(a)(1); 42 U.S.C. § 652(a)(7); 42 U.S.C. § 652(a)(10)(C); 42 U.S.C. § 652(b); 42 U.S.C. § 653(c)(1); 42 U.S.C. § 654(6); 42 U.S.C. § 654(19)(A); 42 U.S.C. § 654(19)(B); 42 U.S.C. § 656(b); 42 U.S.C. § 657(a); 42 U.S.C. § 659(a); 42 U.S.C. § 659(b); 42 U.S.C. § 659(d); 42 U.S.C. § 661(b)(3); 42 U.S.C. § 662(b).

[9] "[I]n making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include –

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In contrast, in § 2640(c), establishing the $50 disregard, Congress uses the term "child support payments." The Senate report on the family income requirement describes the prior law as permitting a family "to exclude a child who is receiving *social security or child support*. . . ." S. Rep. No. 169, 98th Cong., 2nd Sess. 980 (Comm. Print 1984) (emphasis added). The Senate report is a clear indication that Congress viewed social security "benefits" and "child support" as distinct.

B.

The Secretary's Interpretation Of The $50 Disregard Is Reasonable And Entitled To Deference

If there exists any ambiguity in the language used by Congress, then resort is properly made to the legislative history of the enactment. *Blum v. Stenson*, 465 U.S. 886 (1984). Unfortunately, the legislative history surrounding the enactment of § 2640(c) of DEFRA reveals little, if anything, as to Congress' intent in establishing a disregard for "child support payments." Neither the House

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(A) any parent of such child, and (B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a), if such parent, brother or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j), in the case of *benefits* provided under subchapter II of this chapter). (Emphasis added.)

42 U.S.C. § 602(a)(38)(Supp. III 1985).

Bill nor the Senate Amendment contained any disregard provision. The conference added both the "pass through" and disregard provisions. The only explanation the conference committee provides for such modification is:

> The conference agreement follows the Senate amendment with the following modification. A monthly disregard of $50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation. The provision is effective October 1, 1984.

H.R. Conf. Rep. No. 861, 98th Cong., 2nd Sess. 1407, *reprinted in* 1984 U.S. Code Cong. & Admin. News 697, 1445, 2095. Thus, the conference committee, without mentioning the $50 "pass through" of child support collected by a state IV-D agency, gives no evidence of the purpose or intent in establishing either the $50 "pass through" or the $50 AFDC disregard.

Despite this congressional silence, the court of appeals concluded that Congress' sole intent in adopting the "pass through" and disregard provisions was to ameliorate the seemingly harsh effects of the family income requirement. While that may be one of the effects of the provisions, as noted by this Court in *Bowen v. Gilliard*, 483 U.S. 587 (1987), there is no evidence that Congress was exclusively or even primarily motivated by such concern in their enactment. Indeed, it is important to note that both the "pass through" and disregard provisions benefit families who were not affected by the family income requirement. Prior to Congress' adoption of this requirement in 1984, a custodial parent had the option to exclude from the AFDC unit a child receiving child support or

Title II benefits. For many children receiving child support less than their pro rata share of the AFDC grant, the family was better off including the child in the unit. Eligibility for medicaid benefits may well have made it advantageous for others to have been included. If the purpose of Congress in adopting the "pass through" and disregard provisions was solely to ameliorate the effects of the new *mandatory* requirement, than the families previously opting to include such children were blessed with a windfall, receiving a $50 bonus without suffering any change in their eligibility status. There is no evidence that Congress, in a spending reduction measure, intended such windfall.

The Secretary believes that Congress' primary purpose in enacting the "pass through" and disregard provisions was to provide an incentive for obtaining child support payments from noncustodial parents. There is no evidence in the conference committee report itself, however, that such incentive was the motivation behind the "pass through" or the disregard. In a circumstance such as this, where Congress is silent as to its purpose in enacting legislation, deference to the Secretary's interpretation particularly is warranted, unless that interpretation is clearly unreasonable. Where Congress has not revealed its intent, this Court has held that its is not the function of a court to "substitute its own construction . . . for a reasonable interpretation made by the administrator of an agency." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

It cannot be said that the Secretary's interpretation is unreasonable. Increased child support collections which reimburse the federal treasury and move families off

AFDC, is a goal consistent with a spending reduction measure and reflects Congress' repeatedly expressed concern over the continuing problem of the nonpayment of child support.

That concern was expressed as early as 1972, when Congress began efforts to require states to improve and strengthen their programs for establishing and collecting child support on behalf of AFDC recipients. These efforts culminated in the enactment of Title IV-D of the Social Security Act, Pub. L. No. 93-647, 88 Stat. 2337 (1974). In the intervening years, Congress has continued to strengthen efforts to increase child support collections.[10] On November 4, 1983, Senators Durenberger and Boren introduced Senate Concurrent Resolution 84, which encouraged states to focus on the problems of child custody and child support. Legislation adopting by Congress on August 16, 1984, within weeks after the adoption of DEFRA, revised and strengthened the child support enforcement program and included a Sense of the Congress provision. That provision incorporates Senate Concurrent Resolution 84, and specifically finds "a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program." Pub L. No. 98-378, § 23(a)(2), 98 Stat. 1329 (1984). More recently, the persistence of the problem of child support was recognized:

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[10] Pub. L. No. 97-35, §§ 2331, 95 Stat. 357, 860 (1981) (collection of past due support from federal tax refunds), 2334 (child support obligation assigned to state not released by discharge in bankruptcy), 2335 (intercept of unemployment benefits); Pub. L. No. 97-248, 96 Stat. 324, 401, § 172 (1982) (allotments from pay for child and spousal support owed by a member of uniformed services).

> Why do we have so many children living in poverty? One reason is because such a high percentage of them live with a single parent. In many cases, paternity has never been established, or the absent parent refuses to pay child support that has been ordered by a court. The result is millions of poor children tied to welfare.
>
> If we want to reform the welfare system, let us start with an all-out effort to collect child support.

134 Cong. Rec. S7651 (daily ed. June 13, 1988) (statement of Sen. Bentsen).

Nor is Congress a stranger to the use of financial incentives to encourage the establishment and collection of timely and regular child support payments from noncustodial parents. A similar financial incentive was enacted in 1974 for a 15-month trial period which provided a "pass through" of 40 percent of the first $50 of monthly "child support" payments collected by the state and a subsequent disregard of such amounts in AFDC eligibility determinations. Pub. L. No. 93-647, § 101(a), 88 Stat. 2356 (1974). The purpose of such provision was stated in the legislative history to be an incentive for obtaining child support payments from noncustodial parents. S. Rep. No. 1356, 93d Cong., 2d Sess. 52 (1974).

Given Congress' silence on the intent of the enactment of the "pass through" and disregard provisions in DEFRA, the ordinary usage of the term "child support payments," and Congress' previous use of financial incentives to encourage the establishment and payment

of child support from noncustodial parents, the Secretary's interpretation is clearly not an unreasonable one.

Nor is it unreasonable to distinguish between child support payments from noncustodial parents and Title II social security benefits. The Social Security Administration does not need a financial incentive to provide social security benefits to those who are entitled to them under the law. History has shown, and Congress has recognized, however, that noncustodial parents often do need incentives, both positive and negative, to make timely and regular child support payments. A noncustodial parent, aware that one's children will receive a direct monetary benefit from a support payment, rather than having it retained by the state or be deducted from the AFDC payment, may well be encouraged to make timely payments. Nor is asking a custodial parent to appear before a government official to fill out an application form the same as asking that custodial parent to become involved in judicial proceedings against a former spouse or paramour, including the possibility of being subjected to blood tests and cross-examination by zealous defense attorneys on intimate personal matters.

In a statutory area as complex as the Social Security Act, the Secretary, faced with congressional silence on the intent of its enactment, is in a unique position to discern that intent, in light of experience in the field. That experience and that discernment ought to be given the deference of this Court.

CONCLUSION

The Secretary's reading of the $50 disregard should be upheld, not only as a matter of the deference owed in such case, but because that reading is supported by the commonly understood meaning of the term "child support," Congress' consistent use of that term in accord with that meaning, and the expressed concern by Congress over the continuing problem of nonpayment of child support.

Respectfully submitted,

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